

09-3231
LOCALLY ASSESSED PROPERTY
SIGNED 06-23-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER 1 AND PETITIONER 2 Petitioners, v. BOARD OF EQUALIZATION OF DUCHESNE COUNTY, UTAH, Respondent.	INITIAL HEARING ORDER Appeal No. 09-3231 Parcel No. ##### Tax Type: Property Tax/Locally Assessed Tax Year: 2009 Judge: Dixon Pignanelli
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Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER 2, Pro Se, by phone
For Respondent: RESPONDENT REP., Assessor, Duchesne County

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject property for the lien date January 1, 2009 by the Duchesne County Board of Equalization (BOE). The County Assessor set the value at \$\$\$\$\$ and the County BOE reduced the value to \$\$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an initial hearing was held on April 16, 2010 in the Duchesne County Offices. The Property Owner requested the value be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested the value set by the County BOE, \$\$\$\$\$, be sustained.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt Lake County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

The subject property is parcel no. ##### and is located at ADDRESS 1 in SUBDIVISION, which is just outside the CITY limits in unincorporated Duchesne County, Utah. It is a 3.35-acre lot improved with a house built in 2004. The house sits on a half acre, and the rest of the lot is used to raise CROP. The Property Owner described it as a country setting. The house has 3,462 gross living area¹ all above grade on one level with three bedrooms and three full baths. There is a 779 square foot two-car attached garage and a 675 square foot covered patio on the back of the house that was closed in a couple of years ago. The 3.35-acre lot is valued at \$\$\$\$\$ (\$\$\$\$\$ per acre) and the home at \$\$\$\$\$ for a total value of \$\$\$\$\$.

For her appeal to the Tax Commission the Property Owner requested a value of \$\$\$\$\$ an acre or \$\$\$\$\$ for the 3.35-acre lot. She then requested the value of the home be lowered to \$\$\$\$\$ for a total value of \$\$\$\$\$. In support of her value she stated she was offered a three- acre lot in 2004 for \$\$\$\$\$. Even with the growth in value she did not believe that lot today would be

¹ The Assessor’s Records showed 3,462 square feet.

worth more than \$\$\$\$ an acre or the value of \$\$\$\$ she was requesting for her land value. In support of her value the Property Owner submitted a Comparative Market Analysis (CMA)² with three comparables.

The CMA Report provided by the Property Owner is summarized in the chart below. The Property Owner's comments on the Comparables are noted with an astrix (*).

Address *Property Owner comments	Date of sale Sales Price Sales Price/sq ft Days on the Market	Total square footage and adjusted values per square foot (/sqf) which includes the value of the land	Details: # of Acres, Date of construction, Type of home, sq. footage per level
Subject ADDRESS 1. *In SUBDIVISION	NA NA	3450 total sq. feet Requesting \$\$\$\$ or \$\$\$\$/\$sqf	3.35 acres house built 2004 one level 3450 sq ft L1
Comparable One ADDRESS 2 *Further up the road from the subject property	sold 6/18/2009 for \$\$\$\$ or \$\$\$\$/\$ft 86 days on the market	2589 total sq. feet \$\$\$\$ adj. value or \$\$\$\$/\$ft	no acreage given house built 2003 two levels 1,487 sq ft L1 1102 sq ft L2
Comparable Two ADDRESS 3 *In the same subdivision as the subject-- SUBDIVISION	sold 2/13/2009 for \$\$\$\$ or \$\$\$\$/\$ft 310 days on the market seller paid closing costs of \$\$\$\$	3479 total sq. feet \$\$\$\$ adj. value or \$\$\$\$/\$ft	2.5 acres house built 1995 two levels 2,423 sq ft L1 1156 sq ft L2
Comparable Three ADDRESS 4 *Has the same type of country area feeling as the subject property	sold 07/27/2009 for \$\$\$\$ or \$\$\$\$/\$ft 240 days on the market	3,401 total sq. feet \$\$\$\$ adj. value or \$\$\$\$/\$ft	no acreage given house built 2006 two levels 2431 sq ft L1 970 sq ft L2

In support of the BOE value the Assessor said the new home multiplier was missed in calculating the assessed value, so the BOE applied the multiplier and reduced the value of the home by \$\$\$\$ taking the value of the improvements from \$\$\$\$ to \$\$. He refuted the Property Owner's testimony for the value of the lot. He said a lot the size of the subject property, 3.35 acres, located in a subdivision had more value. He added that the Property Owner said the

² The CMA Report stated the subject property had 3,450 square feet. Neither side questioned the square

three acres was “offered” so it may not have been an arms-length transaction. He raised concerns with the offer being an establishment of value in light of the fact the location, zoning and proposed use of the land could affect the value. If it was to be improved with a home and was not in a subdivision, it would require a land survey and minor subdivision approval, which would make it more valuable like the subject property. He noted all the comparable sales on the CMA report were post lien date sales and he felt they were not fully comparable in terms of age, home size, lot size or location. He said he had pulled some comparables, but most were smaller. He did find one good comparable, but he did not bring it to the hearing because he had not provided it prior to the hearing. He said the area was reappraised four years ago and was due to be reappraised next year.

In seeking a value lower than that established by the County BOE the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing. The property owner has provided a CMA report with three comparables with adjusted sale values less than the BOE value for the subject property. The Commission holds the Property Owner has provided evidence to call into question the value of the subject property. The Commission now considers the totality of the evidence.

The Property Owner provided a CMA with three comparables; however, all the comparables sold after the lien date of January 1, 2009, which is the moment in time the value must be determined. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-102(12).)

Although the CMA had upward and downward value adjustments for square footage, bedrooms, and bathrooms, the detailed Multiple Listing Service (MLS) sheets were not included with the CMA. The MLS sheets would have given an indication of the quality of construction, interior differences and effective age of improvements all of which may require further value adjustments.

The CMA also did not indicate all the lot sizes, but the Property Owner used the figure of \$\$\$\$\$ for lot size value adjustments. Comparable Two was noted as being 2.5 acres and the comparable was not given a value adjustment. As the subject property is 3.35 acres and received

footage so it is assumed the Assessor’s Records are correct.

no value adjustment on the CMA this would indicate the Property Owner is assigning any lot between 3.35 and 2.5 acres an equal value of \$\$\$\$\$. Comparable One received a negative adjustment of \$\$\$\$\$ which would indicate it would be a five-acre lot or larger. Comparable Three was given a positive adjustment of \$\$\$\$\$, which would indicate a smaller lot, ranging from .85 to .3 of an acre.³ The Property Owner stated \$\$\$\$\$ was the value at which she was offered three acres in 2004. There was no evidence provided that \$\$\$\$\$ would be the appropriate land value adjustment. Even at a positive increase in value of 1% a month over five years the value of the three-acre parcel would be more than \$\$\$\$\$. The Property Owner requested a value of \$\$\$\$\$ an acre or no more than \$\$\$\$\$ for the subject land value, but did not provide land sales to support the requested value per acre or the requested lot value.

Comparable One had a listing date and sale date after the lien date. It has a thousand square feet less than the subject property, and appears to be on a lot twice the size. The Property Owner testified it was up the road, but did not proffer if it was in a comparable subdivision. It had an adjusted value of \$\$\$\$\$/sqf; the Property Owner is asking for \$\$\$\$\$/sqf. There appear to be too many differences to make this a valid comparable.

Comparable Two sold only 59 days after the lien date, but it had .85 less acreage than the subject property, but did not receive a positive value adjustment on the CMA. It was 14 years old as of the lien date and received a \$\$\$\$\$ positive adjustment for the nine-year difference in the construction date of the subject property, but without the MLS details the Commission does not know the interior differences and how those compare to the subject property. It is possible the subject property has a newer interior that would support a positive value adjustment. The comparable had seller concessions, and had more square footage so it may sell for less per square foot than a smaller home. It sold for \$\$\$\$\$/sqf, and an adjusted value of \$\$\$\$\$/sqf. The property owner is requesting \$\$\$\$\$/sqf. Although in the same subdivision as the subject property, it is a post lien date sale and there appear to be too many differences to make this a valid comparable.

The Property Owner seemed to indicate she consider Comparable Three the most comparable to the subject property. On the CMA next to square footage is handwritten "*same*" and the Property Owner stated it had the same country feeling as the subject property although not in the same sub-division or as large a lot. Comparable Three had a selling price of \$\$\$\$\$/sqf and an adjusted value of \$\$\$\$\$/sqf. The Property Owner has requested \$\$\$\$\$/sqf. Comparable Three sold in July 27, 2009 for \$\$\$\$\$ and was on the market 240 days. This means it would have

³ It was not indicated if zoning would allow a 3400 sq. ft. home on a .25 (1/4) acre lot.

been listed around the end of November or first of December 2008. This is approximately 30 days before the lien date and could give the Commission an indication of value for the subject property. The CMA gives a list price of \$\$\$\$\$. When the same adjustments provided by the Property Owner in the CMA for Comparable Three are applied to its list price of \$\$\$\$\$ (-\$

\$\$\$\$\$ for bedrooms, - \$\$\$\$\$ 1 ¾ bath, -\$\$\$\$\$ for L2, + \$\$\$\$\$ for L1, -\$\$\$\$\$ for 2006 construction date, and +\$\$\$\$\$ for acreage) the adjusted value is \$\$\$\$\$. Even if the market had changed by 1% either direction in December 2008, \$\$\$\$\$ supports the BOE value of \$\$\$\$\$.

Reviewing the evidence presented, the Taxpayer's valuation methods are insufficient to demonstrate error in the value determined by the board of equalization or provide an evidentiary basis to support a new value. All of the Taxpayer's sales took place after January 1, 2009 and would thus have involved buyers and sellers aware of market conditions that were not known or knowable as of January 1, 2009.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the value of the subject property as of January 1, 2009, is \$\$\$\$\$. The County Auditor is hereby ordered to assure its records are in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

DDP/09-3231